

ITEM 8.IMPROVING CERTAINTY AND TRANSPARENCY IN APPLYING PLANNING CONTROLS

FILE NO. DATE:

15/4/04

MINUTE BY THE LORD MAYOR

To Council:

The use of discretion in applying planning controls was a fundamental issue debated during the City of Sydney elections. This is a particularly important in respect of the “core” planning controls that determine the bulk, scale and height of development, such as floor space ratio and height provisions. The exercising of such discretion can influence the scale of development and the flow-on impacts on the surrounding community.

During the election campaign I gave a firm commitment to address this issue. The outcome of the election demonstrates a strong mandate to deliver on the issues for which my team and I stood and campaigned on.

There is public benefit in councils applying a strict approach to height and floorspace ratio controls. This adds certainty to the development process for applicants, and allows neighbours and the community to anticipate the likely outcomes of new development on a site. Large variations of core planning controls should simply not occur. If such large variations are warranted, this should be done by changing the controls themselves, which involves a process of extensive public consultation and consideration of the wider impacts of such changes.

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A related matter that also causes considerable community concern is the process whereby developers have access to “bonus floorspace”. There have been past instances in the implementation of South Sydney Development Control Plan 1997 where large variations to floorspace ratio controls were granted in return for monetary or in kind contributions for public works. At times these variations were well in excess of the 0.25:1 contained in the Plan. Where there has been a lack of transparency or public understanding of the process, the community does not accept the claimed public benefits for which the “bonus” was given, undermining community confidence in the very plan from which the bonus provisions came. Where the planning controls allow extra floorspace, then the public should see and understand the “public benefit” being provided, so its overall merits can be weighed and considered.

The public benefit in a stricter approach to core planning controls was recognised in a recent Land and Environment Court Case for the former Kings Cross Post Office site (Australand Holdings v Sydney City Council). The judgement stated:

“Where a planning instrument includes a maximum FSR and building height, it is unavoidable that members of the public will assume that the FSR and height controls will be upheld. Those few who have read the full 89 pages of the DCP would understand that the controls may be exceeded, but only if the exceedance does not lead to adverse environmental impact”.

In the former South Sydney City Council local government area, the controls and provisions relating to height and floorspace ratios are contained in a Development Control Plan (DCP 1997). I have made firm public commitments during the election campaign that a stricter approach to such controls should be applied, as occurs in the former City of Sydney's planning controls, wherein these controls are in a Local Environmental Plan. Embodying the core planning controls in a LEP provides them with greater statutory weight.

At the same time, Council should note that in order to strictly apply planning controls as is proposed, the planning controls need to be appropriate for a site and area. For example, I am advised by Council's planning staff that the majority of relatively small minor residential extensions exceed the mandated floorspace ratio in Glebe of 0.7:1. Just as community confidence can be eroded by exceeding the maxima for inappropriate new development, the same can occur if the maximum is set too low such that strict application stifles acceptable residential extensions and developments.

The process of varying controls and creating new Local Environmental Plans will take some time, and involve extensive community involvement and public consultation, and I will ask Council to commence this process.

In the interim however, the existing planning controls continue to apply. It is important that the City be clear in articulating its philosophy and approach for applicants and the community. The recommendation below is framed accordingly.

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RECOMMENDATION:

That arising from consideration of a Minute by the Lord Mayor to the Extraordinary Meeting of Council on 19 April 2004, on Improving Certainty and Transparency in Applying Planning Controls, it be resolved that Council:

(A) note that in the process of development assessment there is public benefit in adopting a strict and careful approach in applying "core" planning controls, particularly height limits and floor space ratio controls, which largely determine the bulk and scale of new buildings, and their consequent impact. A strict and careful approach is needed, especially in areas where such controls are contained in a Development Control Plan (as in the South Sydney Development Control Plan 1997);

(B) note that applying planning controls in a consistent and predictable way provides greater certainty for applicants and enables the community to better anticipate the building form of potential new development on sites which may impact on their amenity. This greater level of certainty regarding the potential impact of new development will be very helpful in people's decision to buy property, which for many people is the largest investment they will make;

(C) apply core floor space ratios and height limits as "maxima" (not as "givens"), with any variations being in exceptional circumstances only and where fully justified on planning grounds. Instances of such exceptional circumstances should only occur where the following criteria are met:

(i) where the additional variation improves the development in terms of its relationship with the existing and desired future character of an area; and

(ii) where the variation does not result in any adverse environmental impacts, or impacts on the amenity of surrounding land (such as overshadowing, privacy and views), and

(iii) where the variation is minor, as major variations to planning controls should only occur through varying the control itself, after necessary public consultation, and wider

consideration of issues such as the character of an area, density, integrated transportation strategies, environmental capacity, sustainability and cumulative impacts of such variations;

or

(iv) where the controls are inconsistent with the predominant built form, inconsistent with the desired future character of the area and inconsistent with the stated objectives of the planning instruments developed with community consultation.

(D) discourage the option of receiving monetary contributions for public domain improvements arising from the “bonus floorspace incentive” provisions in the South Sydney Development Control Plan (DCP) 1997 and encourage developers to provide public domain benefits as envisaged in the DCP, such as: additional useable public open space; public transport enhancements; public pedestrian links; cycle paths; and the like; and

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(E) foreshadow that, in the anticipated review of the multitude of planning controls for the newly amalgamated City of Sydney Local Government Area, Council will favour the inclusion of floorspace ratio and height controls in a Local Environment Plan.

(SGD) COUNCILLOR CLOVER MOORE

Lord Mayor

Moved by the Chair (the Lord Mayor) seconded by Councillor McInerney

That arising from consideration of a Minute by the Lord Mayor to the Extraordinary Meeting of Council on 19 April 2004, on Improving Certainty and Transparency in Applying Planning Controls, it be resolved that the Minute by the Lord Mayor be approved and adopted.

Carried.